

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

76-4271

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANTHONY DALLACASA and

MARTHA M. DALLACASA,

Petitioners-Appellants,

Docket No. 76-4271

-against-

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from a Decision of the
UNITED STATES TAX COURT
located at New York, New York

B
P/S

APPELLANT'S BRIEF

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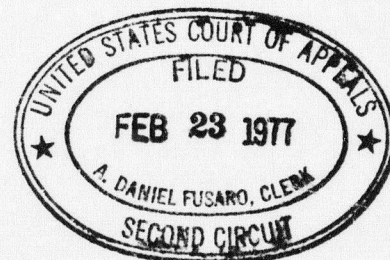


TABLE OF CONTENTS

Issue	page one
Statement	page one
Argument	page three
Conclusion	page four

UNITED STATES COURT OF APPEALS
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Appellant's Brief

ISSUE

Should the Decision of the United States Tax Court be annulled and set aside and the case remanded to the United States Tax Court for a new trial on the basis of newly discovered evidence?

STATEMENT

This is an Appeal taken from a Decision signed by the Honorable Charles R. Simpson, Judge of the United States Tax Court located at 26 Federal Plaza, New York, New York 10007 on or about July 22, 1975.

The whole matter started from an Audit conducted by the Internal Revenue Service of your Petitioner's Income Tax Returns for 1966 and 1967.

After prolonged discussions and negotiations, it was determined by the Internal Revenue Service that your Petitioner did not report taxable income in the amount of \$5,699.19 in 1966 and that your Petitioner did not report taxable income of \$9,071.43 in 1967.

On the basis of this alleged unreported taxable income for 1966 and 1967, your Petitioner was assessed an additional

tax of \$1,206.09 plus \$60.30 in penalties for 1966 and an additional tax of \$2,211.67 plus \$573.07 in penalties for 1967.

Since your Petitioner did not accept the said determination by the Internal Revenue Service, your Petitioner filed a Petition with the United States Tax Court for a redetermination of the said tax deficiency on or about the 9th day of October 1973.

The case appeared on the Trial Calendar of the United States Tax Court located at New York, New York on Monday, April 14, 1975, before the Honorable William H. Quealy for the purpose of assigning a date for trial of the said case.

On that day, your Petitioner asked for a lengthy continuance of the case in order to obtain additional evidence in support of your Petitioner's case which was unavailable at that time.

Judge Quealy felt that he did not want to prolong the matter for any length of time, and set the case down for an immediate trial for Wednesday, April 23, 1975.

As per arrangement between the parties, on Monday, April 21, 1975, the Honorable Judge William H. Quealy signed an Order of Continuance for Settlement Purposes and set the matter down for July 23, 1975 for disposition.

Under the circumstances, your Petitioner felt constrained to sign a Settlement Agreement disposing of the matter in the United States Tax Court.

On or about September 23, 1975, your Petitioner filed a Notice of Appeal from the United States Tax Court to the United States Court of Appeals for the Second Circuit.

ARGUMENT

From the time all the above transpired in the United States Tax Court, your Petitioner finally was able to obtain the necessary material and documents which would explain substantially all of the income which the Internal Revenue Service claimed to be unreported taxable income.

At the time your Petitioner signed the Settlement Agreement, your Petitioner was under great personal pressure and strain to dispose of the matter quickly, and did not know whether he would be able to obtain the necessary material as requested by the Internal Revenue Service in the required time.

Because of the aforesaid pressure by the Internal Revenue Service and strain to dispose of the matter quickly, and not knowing whether the necessary evidence could be obtained in time, your Petitioner made a grave mistake in signing a Stipulation Settling the above matter.

A review of the new evidence that your Petitioner has finally obtained since the time that the matter was before the United States Tax Court indicates that whatever income the Internal Revenue Service labelled as taxable income was really non taxable.

As previously alleged, part of this alleged taxable income were inter-bank transfers from either the Emigrant Savings Bank to the First National City Bank, or vice versa, which had already been taxed as income in the ordinary course of events by your Petitioner's employer.

Also as previously alleged, part of this alleged taxable income were the proceeds obtained by your Petitioner as one of the

beneficiaries of your Petitioner's Uncle when distribution of his Estate was made. This income was, and is, not taxable as income since it was already taxed under other provisions of the taxing law.

Although these allegations were previously made by your Petitioner, the evidence to substantiate these allegations were not available to your Petitioner until recently. This evidence was not available to the Petitioner at the time that this matter was before the United States Tax Court.

It is well known that a new trial before the United States Tax Court can be ordered by this Honorable Court on the basis of newly discovered evidence.

To refuse a new trial on the basis of newly discovered evidence would result in a grave miscarriage of justice.

In view of this newly discovered evidence, your Petitioner is of the opinion that the whole matter could be adjusted and disposed of quickly with a determination wholly favorable to your Petitioner, by a Conference between the appropriate parties either in the United States Tax Court or in this Honorable Court.

CONCLUSION

In view of mistake and newly discovered evidence, the Decision of the United States Tax Court should be annulled and set aside, and the case remanded for a new trial by this Honorable Court.

Yours, etc.

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United States Court of Appeals
For The Second Circuit

~~Index No.~~

Docket No. 76-4271

Anthony Dallacasa and Martha M. Dallacasa

Petitioners-Appellants

Plaintiff

against

Commissioner of Internal Revenue

Respondent-Appellee

Defendant

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF New York

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
1662 Cropsey Avenue, Brooklyn, New York

That on February 23, 1977 19 deponent served the annexed

Appellant's Brief and Appellant's Appendix
on Appellate Section of The United States Justice Department
attorney(s) for Commissioner of Internal Revenue
in this action at Washington, D.C. 20530
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me
February 23, 1977

Anthony Dallacasa
The name signed must be printed beneath

Anthony Dallacasa
Petitioner Pro Se

Miriam Mulberg